Supreme Court, U.S.
FILED

961129 JAN 13 1997

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1996

ANTHONY JAMES MOSCHETTI,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

PETITION FOR A WRIT OF CERTIORARI

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OR CALL COLLECT (402) 342-2831

33 pp

QUESTION PRESENTED

DOES MARYLAND'S PROCEDURE OF REQUIRING ONLY MEMBERS OF THE PUBLIC TO APPEAR AT MOTOR VEHICLE ADMINISTRATIVE LAW HEARINGS IN VIOLATION OF STATE LAW AND HAVING THE STATE ADMINISTRATIVE LAW JUDGES INTRODUCE EVIDENCE ON BEHALF OF THE STATE WHICH DOES NOT APPEAR VIOLATE THE EQUAL PROTECTION CLAUSE AND DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

LIST OF INTERESTED PERSONS

The caption contains the names of all the parties below.

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OPINION BELOW

The Order of the Court of Appeals of Maryland, *Anthony James Moschetti v. Motor Vehicle Administration*, Petition Docket No. 449, September Term, 1996, denying review by certiorari is reproduced in Appendix A. The Docket Entries of the Circuit Court for Howard County, Maryland affirming the decision of the Motor Vehicle Administration in *Anthony James Moschetti v. Motor Vehicle Administration*, Civil Action No. 96-CA-30169 is reproduced in Appendix B. The Findings of Fact and Conclusions of Law of the Administrative Law Judge in Motor Vehicle Administration v. Anthony Moschetti is reproduced in Appendix C.

STATEMENT OF JURISDICTION

The Petitioner requests that this Court grant the petition for writ of certiorari and reverse the judgment of the Court of Appeals of Maryland in *Anthony James Moschetti v. Motor Vehicle Administration*, Petition Docket No. 449, September Term, 1996, which refused to review and, in effect affirmed, the decision of the Circuit Court for Howard County, Maryland in Civil Action No. 96-CA-30169. The decision in this case denied the Petitioner his due process and equal protection rights guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution. The Court has jurisdiction to consider the Due Process and Equal Protection constitutional claims of the petitioner pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Constitution, Amendment V, provides in pertinent part:

> . . . nor shall any person be . . . deprived of life, liberty, or property, without due process of law . . .

The United States Constitution, Amendment XIV, provides in pertinent part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Factual Background

The Petitioner, Anthony James Moschetti, was requested by a police officer to take a breath test to determine alcohol concentration on December 17, 1995. Petitioner was granted a hearing, at his request, before the Office of Administrative Hearings on the issue of his alleged refusal to take a chemical breath test for alcohol.

On February 7, 1996, an administrative law hearing was held before Judge Willie E. Walker of the Office of Administrative Hearings. The State, through the Motor Vehicle Administration, did not appear at this hearing and the Petitioner objected to the hearing proceeding forward on the ground that the State's noncompliance with the Maryland Administrative Procedure Act (State Government Article, §10-201 - §10-223) which requires all

parties to attend and participate in the hearing violated both the state statute and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Reproduced in Appendix E is a copy of the administrative hearing notice which informs the Petitioner that "Your failure to appear as required will result in the cancellation, refusal, suspension, revocation or disqualification of your driving privilege". At this hearing only the Petitioner appeared. This objection regarding the fail ure of the State to appear at this hearing was denied. Over the objection of the Petitioner, the Administrative Law Judge, who is required to be impartial, then proceeded to offer documents into evidence on behalf of the State and then ruled on the admissibility of the evidence he was offering for admission. Following this hearing, the Petitioner's license was completely suspended for 120 days pursuant to Maryland Annotated Code, Transportation Article, §16-205.1(b)(2) and §16-205.1(n)(1)(i). An appeal was timely noted and the Circuit Court for Howard County, Maryland ruled in favor of the Respondent. A Petition for a Writ of Certiorari was timely filed in the Court of Appeals of Maryland which was denied.

Maryland Law

Since January 1, 1990, Maryland Annotated Code, Transportation Article, §16-205.1 has required that drivers who refuse a proper breath test to determine alcohol concentration shall have their drivers' licenses suspended for 120 days for a first offense with no possibility for a modified suspension to permit licensees to drive for employment or alcohol counseling.

Proceedings before the Maryland Office of Administrative Adjudication

On February 7, 1996, the Petitioner objected to the hearing proceeding without the presence of the State as required by Maryland Administrative Procedure Act (State Government Article, §10-201 - §10-223) on the ground that to require only the Petitioner to attend this hearing in violation of state law violated both the state statute and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. At this hearing, the Petitioner also objected to the actions of the administrative law judge in introducing evidence of one party (the State) against another (the Petitioner) as being outside the scope of the legal authority of the administrative law judge and a violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Proceedings before the Circuit Court for Howard County, Maryland

These issues were raised before the Circuit Court for Howard County, Maryland on appeal and were denied following a hearing on August 29, 1996.

Proceedings before the Maryland Court of Appeals

These issues were raised in the Petition for a Writ of Certiorari to the Court of Appeals of Maryland and the Petitioner's request for a Writ of Certiorari was denied on December 11, 1996.

REASONS FOR GRANTING THE WRIT

MARYLAND'S PROCEDURE OF REQUIRING ONLY MEMBERS OF THE PUBLIC TO APPEAR AT MOTOR VEHICLE ADMINISTRATIVE LAW HEARINGS IN VIOLATION OF STATE LAW AND HAVING THE STATE ADMINISTRATIVE LAW JUDGES INTRODUCE EVIDENCE ON BEHALF OF THE STATE WHICH DOES NOT APPEAR VIOLATES THE EQUAL PROTECTION CLAUSE AND DUE PROCESS CLAUSE OF FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

I. THIS CASE IS WORTHY OF REVIEW BECAUSE THE STATE ADMINISTRATIVE LAW JUDGES VIOLATE DUE PROCESS AND EQUAL PROTECTION OF LAWS IN GRANTING PREFERENTIAL TREATMENT TO THE STATE MOTOR VEHICLE ADMINISTRATION IN VIOLATION OF STATE STATUTES AND VIOLATE DUE PROCESS BY INTRODUCING EVIDENCE ON BEHALF OF THE STATE WHEN IT FAILS TO APPEAR TO REPRESENT ITSELF AT MOTOR VEHICLE ADMINISTRATIVE HEARINGS.

In accordance with Transportation Article, §12-206, driver's license suspension hearings are held pursuant to Maryland Administrative Procedure Act located at State Government Article, §10-201 et seq. Section 10-208(b)(7) of the State Government Article makes it clear that both parties must appear to present evidence unless such evidence has been agreed upon by both parties and the parties have agreed to waive their right to appear. No such agreement existed in this case. Further, Section 10-213(a) states: "Each party in a contested case shall offer all of the evidence that the party wishes to have made part of the record". The Office of Administrative

Hearings has passed regulations to govern the conduct of its hearings pursuant to State Government Article, §10-206. These regulations (known as Rules of Procedure) are found at Code of Maryland Regulations ("COMAR") 28.02.01 et seq. The pertinent COMAR regulations are reproduced in Appendix F. COMAR Rule .20 provides that if a party fails to attend or participate at a hearing, the administrative law judge may issue a default order against the defaulting party. COMAR Rule .17 specifically states how the parties are to practice before the administrative law judge and delineates the administrative law judge's duties and authority. Nowhere in Rule .17 or in the COMAR regulations is an impartial administrative law judge vested with the power or authority to put on a case for an absent party or to present evidence for admission on behalf of a missing party and then rule on the admissibility of such evidence.

Nowhere in the Annotated Code of Maryland is there an exception in the Maryland Administrative Procedure Act which exempts the State operating as the Maryland Motor Vehicle Administration ("MVA") from the requirements of the statutes and regulations promulgated in COMAR requiring the MVA and all other parties to appear and present evidence at a hearing. The failure of the State to attend this hearing and present evidence and the actions of the administrative law judge in presenting evidence on behalf of the MVA violates the Equal Protection and Due Process Clause of the Fourteenth Amendment to the United States Constitution by exempting only the State from compliance with the Maryland

Administrative Procedure Act and the COMAR regulations governing the conduct of the administrative hearings. Maryland law is clear that the regulations governing the conduct of administrative hearings are "precise rubrics" which are mandatory and binding on the administrative law judges as well as the parties to an administrative law hearing. As the Court stated in *Sanders v. Rowan*, 61 Md.App. 40, 484 A.2d 1023 (1984):

> As much as the Maryland Rules of Practice and Procedure are not merely guides to the practice of law but "precise rubrics" to be read and followed, *Countess v. State*, 286 Md. 444, 463, 408 A.2d 1302 (1979), so **these regulations** of the Racing Commission are more than merely helpful hints to those engaged in the horse racing industry. They **are also precise rubrics, intended to ensure the integrity of the industry** and to protect the public against fraud and corruption. **They do this, in part, by establishing certain specific procedures to be followed** in the running of races, by requiring nearly everyone participating in the conduct of racing to be licensed, and **by placing specific responsibility** on the various licensees **to follow the mandated procedures**. (emphasis added).

Further, it is a violation of due process and fundamentally unfair for the administrative judge to take it upon himself to introduce evidence and then rule on this evidence. These actions violate the due process rights of the Petitioner guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

It is a well recognized principle of American jurisprudence that the suspension or revocation of a driver's

license by the State involves a property interest protected by the Due Process Clause of the Fourteenth Amendment. See *Mackey v. Montrym*, 443 U.S. 1, 11 (1979); *Dixon v. Lowe*, 431 U.S. 105, 113 (1977); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Sites v. State*, 300 Md. 702, 481 A.2d 192 (1984). As stated by the Court of Appeals in *Sites*, the continued possession of a driver's license may become essential to earning a livelihood and therefore it is an entitlement which cannot be taken away without due process of law. See also *Brosan v. Cochran*, 307 Md. 662, 516 A.2d 970 (1986).

It is the Petitioner's position that the State is compromising the impartiality of the administrative law judges as well as ignoring both the letter and the spirit of the law drafted to govern the administrative hearings concerned with driver's license suspension on a daily basis by failing to appear and have the administrative judges serve as surrogate prosecutors of the State's cause.

CONCLUSION

For the reasons set forth herein the Petitioner requests this Court grant the petition for a writ of certiorari.

Respectfully submitted,

JOSEPH E. CAREY*
14300 Gallant Fox Lane
Suite 223
Bowie, MD 20715
301-464-2500

Counsel for Petitioner
**Counsel of Record*

January 10, 1997

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APPENDIX A

ANTHONY JAMES MOSCHETTI	*	**In the**
	*	**Court of Appeals**
v.	*	**of Maryland**
MOTOR VEHICLE ADMINISTRATION	*	**Petition Docket No. 449**
	*	**September Term, 1996**
	*	**(No. 96-CA-30169,**
	*	**Circuit Court for**
	*	**Howard County)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Circuit Court for Howard County, and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Date: DEC 11 1996

APPENDIX B

CIRCUIT COURT FOR HOWARD COUNTY

(LOGO) (SEAL)

8360 Court Avenue, Room 300
Ellicott City, MD 21043-4579
410-313-2111

Margaret D. Rappaport, Clerk

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I, MARGARET D. RAPPAPORT, *Clerk of the Circuit Court for Howard County, do hereby certify that the above is a true copy of the original* Docket Entries 96CA 30169 *now on file in the above entitled case.*

IN TESTIMONY WHEREOF, *I hereby set my hand and affix the seal of the Circuit Court for* ***HOWARD COUNTY*** *this* 23rd *day of* September *1996.*

/s/ Margaret D. Rappaport
Clerk of the Circuit Court for Howard County, Maryland

GENERAL DOCKET

CASE NBR: 96-CA-30169 PARTY NBR: 001 FILED: 02/21/96 OPEN WARR: 0
TYPE: 99-ADMINISTRATIVE AGENCY REDOCKET 00/00/00 COUNTER A: 0
JUDGE: 22 JURY REQUIRED ? NO PRETRIAL : 00/00/00 COUNTER B: 2
DST ATTY: AA TRIAL : 00/00/00 COUNTER C: 16
TIME : M
STATUS: CLSD DATE 08/29/96 LAST TRAN: 08/29/96 BALANCE: .00

P/D	Party Name	Ready	Number	Attorney Name
P	MOSCHETTI, ANTHONY J.	YES	51681	CAREY, JOSEPH E., ESQ.
D	MOTOR VEHICLE ADMINISTRATION	YES	52897	CURRAN, J. JOSEPH, JR., ESQ.

			CHARGES	COSTS
CHARGES:				
ACTIONS:	02/21/96 ***ASSIGNED TO JUDGE KANE***			.00
	02/21/96 PETITION FOR JUDICIAL REVIEW OF THE MVA A-C	1	90.00	
	02/21/96 DECISION SOUNDEX NO. M-230-067-367-822			.00
	02/21/96 CASE NO. 96-000622			.00
	02/21/96 NOTICE SENT			.00
	02/21/96 MOTION TO STAY ENFORCEMENT OF FINAL	2		.00
	02/21/96 DECISION			.00
	02/21/96 AFFIDAVIT	3		.00
	02/22/96 **********TO FILE ROOM**********			.00
	02/26/96 *****ORDER UP TO JUDGE KANE *****			.00
	02/28/96 ORDERED MH TO STAY ENFORCEMENT OF FINAL 522	4		.00
	02/28/96 DICISION IS GRANTED TO THE EXTENT THAT			.00
	02/28/96 THE PETITIONER MAY DRIVE ONLY IN			.00
	02/28/96 CONNECTION WITH HIS EMPLOYMENT & ATTEND			.00
	02/28/96 ALCOHOL ED. & COUNSELING			.00
	02/28/96 COPIES MAILED			.00
	03/01/96 RESPONSE TO PETITION	5		.00
	04/25/96 RECORD AND TRANSCRIPT REC'D FROM MVA	6		.00
	04/26/96 NOTICE ISSUED PER MD RULE 7-206 (E)	7		.00
	04/26/96 COPY SENT TO ASSIGNMENT			.00
	04/30/96 SET FOR COURT TRIAL ON 6-27-96			.00
	05/08/96 POSTPONEMENT MOTION FOR TRIAL.	8		.00
	05/08/96 *****ORDER UP TO JUDGE KANE*****			.00
	05/09/96 FILE RETURNED FROM JUDGE			.00
	05/09/96 FILE TO ASSIGNMENT			.00

BEST AVAILABLE COPY

05/09/96	POSTPONEMENT GRANTED (TRIAL)	522	9	.00
05/10/96	SET FOR COURT TRIAL ON 7-30-96			.00
05/13/96	LINE CONSENTING TO MOA MH FOR CONTINUANCE		10	.00
05/13/96	MEMORANDUM OF LAW IN SUPPORT OF PETITION		11	.00
05/13/96	FOR JUDICIAL REVIEW			.00
05/21/96	POSTPONEMENT MOTION FOR TRIAL.		12	.00
05/21/96	*****ORDER UP TO JUDGE KANE*****			.00
05/21/96	FILE RETURNED FROM JUDGE			.00
05/22/96	FILE TO ASSIGNMENT			.00
05/22/96	POSTPONEMENT GRANTED (TRIAL)	522	13	.00
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08/29/96	COURT AFFIRMS DECISION OF	CLS		.00
08/29/96	ADMINISTRATIVE LAW JUDGE	522		.00
			90.00	.00
			90.00	

NAME: Anthony James Moschetti **SOUNDEX:** M230-067-367-827

LOCATION : LG-A-MVA 02/07/96 **CASE # :** 96-000622

FINDINGS OF FACT

After considering the evidence and testimony presented in this case, I find by a preponderance of the evidence the following facts:

1) The police officer who stopped or detained Petitioner had reasonable grounds to believe that Petitioner was driving or attempting to drive a motor vehicle while intoxicated or under the influence of alcohol, drugs, a controlled dangerous substance, or any combination of the aforementioned, or in violation of an alcohol restriction, or in violation of MD. TRANSP. CODE ANN.§ 16-813 based on the following: Police Observed the pet Known Individ. to Operate the motor Vehicle on Seven (7) occ.

2) There was evidence of the use of alcohol, drugs, controlled dangerous substances, or any combination of the aforementioned based on the following: Police Observed & Strong Odor of alcohol on the Petitioners Breath

	YES	NO
3) The officer fully advised the Petitioner of the administrative sanctions to be imposed	☑	☐
4) The officer requested that the Petitioner take a test as defined in MD. TRANSP. CODE ANN. §16-205.1(a)(1)(iii)	☐	☐
5) The Petitioner drove or attempted to drive a motor vehicle and took the test as requested, indicating an alcohol concentration of 0.___ grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood] at the time of testing	☐	☐
6) The Petitioner refused to take the test:	☐	☐
7) The Petitioner was driving a commercial motor vehicle:	☐	☐

OTHER FACTS [IF NEEDED]

Petitioner failed Field Sobriety Tests. Petitioner refused Breath Test.

CONCLUSIONS OF LAW

Based upon the foregoing, I conclude that Petitioner is subject to sanction pursuant to MD. TRANSP. CODE ANN. § 16-205.1

Based upon the foregoing, I conclude that Petitioner is not subject to sanction pursuant to MD. TRANSP. CODE ANN. § _____

MODIFICATION DETERMINATION

APPLICABLE ONLY IF PETITIONER TOOK THE TEST. I have weighed the adverse effect upon the petitioner's need to drive for employment or alcoholic prevention purposes versus the State's need to maintain safety on the public highways.

	YES	NO
1) Petitioner has had a license suspended under MD. TRANSP. CODE ANN. § 16-205.1 in the past 5 years	☐	☐
2) Petitioner has been convicted under MD. TRANSP. CODE ANN. §21-902 in the past 5 years	☐	☐
3) Petitioner needs a license for employment purposes	☐	☐
4) Petitioner needs a license to attend an alcoholic prevention or treatment program	☐	☐

DECISION

☑ Driving privilege is suspended for ___ 45 days ___ 90 days ☑ 120 days ___ 1 year ___ other _____

Any suspension imposed shall run ☐ concurrent with ☐ consecutive to any existing suspension.

Any suspension imposed shall be retroactive to : _____

☐ Above suspension is modified to a restricted license [see attached License Restriction Order] ☐ Above suspension is not modified

☐ No suspension imposed

☐ Other: _____

2/7/96
Date

Victor F. Nolan
Administrative Law Judge

Willie E. Walker
Printed name of Administrative Law Judge

OAH-APS-1 (Revised 1994)

APPEAL RIGHTS ON BACK

APPENDIX C

APPENDIX D

NOTICE OF HEARING

AS SET FORTH IN THE MARYLAND TRANSPORTATION CODE ANNOTATED, SECTIONS 12-202 THROUGH 12-209 INCLUSIVE, YOU ARE HEREBY NOTIFIED TO APPEAR FOR A MOTOR VEHICLE ADMINISTRATION HEARING. THE HEARING PROCEDURE TO BE EMPLOYED IS FOUND IN COMAR 11.11.02, COMAR 28.02.01, AND IN ANY OTHER COMAR PROVISIONS NOTED BELOW. YOU SHALL BE AFFORDED THE OPPORTUNITY TO SHOW CAUSE WHY YOUR DRIVER'S LICENSE OR PRIVILEGE TO DRIVE SHALL NOT BE SUSPENDED, REVOKED, DISQUALIFIED, CANCELLED OR REFUSED FOR ALLEGED VIOLATIONS OF THE FOLLOWING;

SECTION 16-205.1, COMAR 11.11.02 AND 11.11.03, REFUSAL TO SUBMIT TO CHEMICAL TESTS FOR INTOXICATION (IMPLIED CONSENT)

ISSUE DATE: 01/02/17 (Received Jan. 24, 1996)

NOTICE DATE: 01/23/96 PETNR/RESP: Moschetti, Anthony James

CASE NO.: 96-000622 SOUNDEX: M230-067-367-827

HEARING DATE: 02/07/96 Wednesday TIME: 09:00

PLACE OF HEARING:

Largo Branch Office
10251 Central Avenue
Docket A
Upper Marlboro,
Maryland 20774

Joseph E. Carey
14300 Gallant Fox
Lane #223
Bowie, MD 20715 (LOGO)

IMPORTANT INFORMATION ABOUT YOUR HEARING:

- IF YOU WISH TO BE REPRESENTED BY AN ATTORNEY AT THE HEARING, YOU SHOULD CONTACT ONE IMMEDIATELY.
- YOUR FAILURE TO APPEAR AS REQUIRED WILL RESULT IN THE CANCELLATION, REFUSAL, SUSPENSION, REVOCATION OR DISQUALIFICATION OF YOUR DRIVING PRIVILEGE.

BRING THE FOLLOWING WITH YOU TO THE HEARING:

- 1. YOUR MARYLAND DRIVER'S LICENSE AND A LICENSED DRIVER:

  IF THE HEARING RESULTS IN THE LOSS OF YOUR MARYLAND DRIVING PRIVILEGE, YOUR LICENSE WILL BE TAKEN AT THE HEARING. THEREFORE, YOU SHOULD BRING A LICENSED DRIVER WITH YOU IN ORDER TO DRIVE YOUR VEHICLE HOME.

- 2. ANY TEMPORARY OR EXTENDED LICENSE ISSUED TO YOU BY A POLICE OFFICER, THE MOTOR VEHICLE ADMINISTRATION, OR THE OFFICE OF ADMINISTRATIVE HEARINGS.

- NO POSTPONEMENTS WILL BE GRANTED UNLESS GOOD CAUSE IS SHOWN IN WRITING, TO THE OFFICE OF ADMINISTRATIVE HEARINGS, CLERK'S OFFICE, FIVE (5) DAYS PRIOR TO THE HEARING DATE. THE WRITTEN REQUEST FOR POSTPONEMENT, IF GRANTED, WILL SERVE TO WAIVE YOUR RIGHT TO A HEARING (OR A DECISION) WITHIN THE LEGAL TIME LIMITS. POSTPONEMENT REQUESTS MAY BE MAILED TO:

CLERK'S OFFICE, UNIT F
STATE OF MARYLAND
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW BUILDING
10753 FALLS ROAD
LUTHERVILLE, MARYLAND 21093

APPENDIX E

MARYLAND CODE ANN., TRANSPORTATION ARTICLE, § 12-206 (1992 REPL. VOL., 1996 CUM. SUPP.)

§ 12-206. Conduct of Hearing.

Except as otherwise provided in this article, a hearing held under the Maryland Vehicle Law shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act – Contested Cases). (1993, ch. 621.)

PERTINENT PORTIONS OF MARYLAND CODE ANN., TRANSPORTATION ARTICLE, § 16-205.1 (1992 REPL. VOL., 1996 CUM. SUPP.)

§ 16-205.1. Suspension or disqualification for refusal to submit to chemical tests for intoxication.

* * *

(a) (2) Any person who drives or attempts to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309, inclusive, of the Courts of Judicial Proceedings Article, to take a test if the person should be detained on suspicion of driving or attempting to drive while intoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title.

(b) *No compulsion to take chemical test; consequences of refusal.*

(1) Except as provided in subsection (c) of this section, a person may not be compelled to take a test. However, the detaining officer shall advise the person that, on receipt of a sworn statement from the officer that the person was so charged and refused to take a test, or was tested and the result indicated an alcohol concentration of 0.10 or more, the Administration shall:

(i) In the case of a person licensed under this title:

* * *

2. For a test refusal:

A. For a first offense, suspend the driver's license for 120 days . . .

* * *

(n) *Modification of suspension.*

(1) The Administration may modify a suspension under this section or issue a restrictive license if:

(i) The licensee did not refuse to take a test . . .

APPENDIX F

MARYLAND CODE ANN., STATE GOVERNMENT ARTICLE, § 10-201 (1992 REPL. VOL.)

Subtitle 2. Administrative Procedure Act – Contested Cases.

§ 10-201. Declaration of Policy.

The purpose of this subtitle is to:

(1) ensure the right of all persons to be treated in a fair and unbiased manner in their efforts to resolve disputes in administrative proceedings governed by this subtitle; and

(2) promote prompt, effective, and efficient government.

MARYLAND CODE ANN., STATE GOVERNMENT ARTICLE, § 10-206 (1992 REPL. VOL.)

§ 10-206. Procedural regulations.

(a) *Adoption by Office; conflict.*

(1) The Office shall adopt regulations to govern the procedures and practice in all contested cases delegated to the Office and conducted under this subtitle.

(2) Unless a federal or State law requires that a federal or State procedure shall be observed, the regulations adopted under paragraph (1) of this subsection shall take precedence in the event of a conflict.

(b) *Adoption by agencies.* – Each agency may adopt regulations to govern procedures under this subtitle and practice before the agency in contested cases.

(c) *Expedited hearings.* – Regulations adopted under this section may include procedures and criteria for requesting and conducting expedited hearings.

(d) *Prehearing procedures.* – Each agency and the Office may adopt regulations that:

(1) provide for prehearing conferences in contested cases; or

(2) set other appropriate prehearing procedures in contested cases.

(e) *Explanatory materials.* – To assist the public in understanding the procedures followed by an agency or the Office in contested cases, an agency or the Office may develop and distribute supplemental explanatory materials, including the related forms that the agency or Office requires and instructions for completing the forms.

* * *

PERTINENT PORTIONS OF MARYLAND CODE ANN., STATE GOVERNMENT ARTICLE, § 10-208 (1992 REPL. VOL.)

§ 10-208. Notice of hearing.

(a) *In general.* – An agency or the Office shall give all parties in a contested case reasonable written notice of the hearing.

(b) *Contents of notice.* – The notice shall state:

* * *

(6) that failure to appear for the scheduled hearing may result in an adverse action against the party; and

(7) that, unless otherwise prohibited by law, the parties may agree to the evidence and waive their right to appear at the hearing.

* * *

PERTINENT PORTIONS OF MARYLAND CODE ANN., STATE GOVERNMENT ARTICLE, § 10-213 (1992 REPL. VOL.)

§ 10-213. Evidence.

(a) *In general.*

(1) Each party in a contested case shall offer all of the evidence that the party wishes to have made part of the record.

(2) If the agency has any evidence that the agency wishes to use in adjudicating the contested case, the agency shall make the evidence part of the record.

* * *

APPENDIX G

PERTINENT PORTIONS OF CODE OF MARYLAND REGULATIONS, TITLE 28, SUBTITLE 02, RULES OF PROCEDURE (1995)

Chapter 01 Rules of Procedure

* * *

.01 Scope.

A. This chapter applies to all hearings before the Office of Administrative Hearings.

B. These regulations shall be construed to ensure the fair and expeditious determination of every action.

* * *

.17 Conduct of Hearings.

* * *

C. Order of Proceedings.

(1) A case shall be called to order by the judge.

(2) The judge shall explain briefly the purpose and nature of the hearing.

(3) The judge may allow the parties to present preliminary matters.

(4) The judge shall state the order of presentation of evidence.

(5) Witnesses shall be sworn or put under affirmation to tell the truth.

D. Waivers.

(1) Waiver of Right to Appear at Hearing.

(a) A party may waive the right to appear personally at the hearing unless prohibited by law.

(b) A waiver shall be in writing and filed with the Office.

* * *

(2) Waiver of Hearing. A hearing before a judge is not necessary if all parties agree to the admission of the evidence and waive their right to appear.

* * *

.20 Failure to Attend or Participate in Hearing, Conference, or Proceeding; Default.

A. If, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a:

(1) Final default order against the defaulting party; or

(2) Proposed default order against the defaulting party.

* * *